

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 15-88 (SRN/JJK)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	GOVERNMENT’S MOTION TO
)	DETAIN DEFENDANT
ANDREW L. SCHILLER,)	
)	
Defendant.)	

The United States of America, by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, Katharine T. Buzicky, Assistant United States Attorney, hereby moves the Court to detain the defendant pursuant to Title 18, United States Code, Section 3142(e)(3)(E).

PROCEDURAL AND FACTUAL BACKGROUND

Defendant Andrew Schiller has been indicted on one count of Production of Child Pornography in violation of Title 18, United States Code, Section 2251(a). Schiller is a member of the Minnesota National Guard. This prosecution arose out of a complaint by a Missouri woman who discovered inappropriate Facebook communications between her minor daughter and Schiller, then deployed to Afghanistan. Further investigation revealed that Schiller had attempted, and in some cases succeeded, in enticing multiple minor females to engage in sexually explicit conduct online, including Minnesota resident Jane Doe #1, who is the victim of the charged offense.

Initiation of Investigation and Interview of Schiller

Upon receiving the complaint from the Missouri woman, Army Criminal Investigative Division (CID), Kandahar Field Office, opened an investigation of Schiller. Army CID Special Agent Timothy Wheeler interviewed Schiller in March of 2014. After being advised of and waiving his legal rights under the Uniform Code of Military Justice, Schiller rendered a sworn written statement in which he admitted to searching for underage girls on the Internet and asking them for pictures of a sexual nature and/or to Skype or video chat. Schiller admitted that some of the minor females with whom he communicated provided him with nude photographs and that he had asked for and received nude photographs from three minor females during the past five years. Schiller identified one of these minor females as a resident of his community in Minnesota, whom he knew personally prior to his deployment to Afghanistan. (This individual is referred to herein as Jane Doe #2 in order to protect her privacy.) Schiller identified another of these minors as Jane Doe #1, whom he described as a 15-year-old girl he met online.¹ Schiller stated that he initially saved the pictures he received from these minors, but then deleted them after realizing he was in a “dark period” doing “stupid things.” Schiller admitted purposefully enticing underage girls to have sexually explicit conversations and to take inappropriate pictures.

Schiller also admitted to searching the Internet with terms such as “underage girls, preteens, naughty teens, daddy daughter, and young girls dancing,” with the goal of obtaining nude and non-nude images for the purpose of sexual arousal. Schiller stated that

¹ Investigation later revealed that Jane Doe #1 was actually fourteen years old at the time Schiller was communicating with her online.

he saved the images he obtained as a result of these searches, but would then routinely delete them.

Schiller's Extensive Pattern of Sexual Solicitation of Minors

Pursuant to a military search authorization, Army CID seized numerous digital devices, including a laptop, tablet, and a Samsung smart phone belonging to Schiller. Initial forensic analysis of these devices uncovered one child pornography file on Schiller's laptop computer, a 51-second video depicting a prepubescent female sitting on/straddling the torso of an adult male who is lying down. The victim pulls down the adult male's underwear, places his erect penis into her mouth and begins to perform oral sex on him.

After receiving the case file and evidence from Army CID, FBI Special Agent Maureen Lese applied for and obtained search warrants for Schiller's social media accounts. SA Lese's review of the data received pursuant to these search warrants, in addition to evidence located on Schiller's electronic media, confirmed that Schiller frequently attempted to communicate with minor females under the age of eighteen, specifically asking them to Skype and/or send photographs of a sexual nature to Schiller.

For example, Schiller utilized his MyLOL profile ("funinlife") to contact 86 girls between the ages of thirteen and seventeen in a single week during March 2014. MyLOL advertises itself as the number one teen dating site in the United States, and its terms of service prohibit users over the age of 20 from accessing the site. On MyLOL, Schiller targeted, in particular, minor females who lived on or near military bases. In one communication between Schiller and a fourteen-year-old girl, Schiller stated that he wants to get to know her better, become her boyfriend, and spend a weekend with her in his dorm

room. In another communication between Schiller and a thirteen-year-old girl, Schiller stated that it would be fun to date a girl her age, and also asked if she could set him up with some girls between ten and fifteen years of age who enjoy Skype and who might be “naughty” and like to have “fun,” or girls who want an older guy to get them “knocked up.”

SA Lese also reviewed KIK messages and photographs located on Schiller’s cell phone. KIK is an instant messaging application for mobile devices which allows users to share photographs, webpages, and other content. Schiller also utilized KIK to engage in multiple conversations, typically of a sexual nature, with minor females. For example, on January 2, 2014, Schiller asked a female, who identified herself as a sixteen-year-old high school student, if she had video capability and if she could put a “lil show together” for him. She responded that she couldn’t create a video because her family was home, but that she took pictures for him yesterday. She then sent Schiller 17 images, 12 of which depicted close up pictures of her genitalia. Schiller then asked this minor female if she could round up even younger girls to fulfill his fantasies. When asked how young, Schiller responded, “as young as 12/13”. In another KIK chat, Schiller asked a self-identified fourteen-year old girl if she could “spice up his birthday” by sending pictures or Skyping. When the girl asked Schiller for a picture of himself, he delivered her a picture of his erect penis. Schiller asked her for assistance in finding younger girls who enjoy Skyping and Snapchat. He described his ideal age to this girl as “13 to 17.”

SA Lese reviewed Facebook messages saved on Schiller’s cell phone and tablet, many of which also involved sexually-oriented communications with minor females. In these messages, Schiller once again solicited minor females to engage in sexually explicit

conduct via the Internet. For example, Schiller asked one female, age unknown, if she knew any young girls who enjoy oral sex and giving lapdances/grinding. Schiller stated that he has no “low limit,” referring to age. In a chat with another female (age unknown), Schiller asked if she knew any girls from school that might be looking to make some money on the side. When asked to explain further, Schiller responded with, “cam chat² on Skype, have fun and get paid for it.”

SA Lese reviewed over one hundred Skype chats located on Schiller’s various computer media. In the vast majority of these chats, Schiller, employing the Skype ID “thriller_a_schiller3,” initiated the request to Skype/video chat with a self-identified minor female. Typically, Schiller would quickly shift the conversation to sexual topics. For example, in one Skype chat, Schiller asked a self-identified 16-year-old girl whether she has any pictures to “help him out” with his sexual frustration. Schiller then asks whether, if he supplies alcohol to the minor, they can try their other “goal,” namely, involving a 12-to-15-year-old female in sexual activities during an in-person meeting. Schiller’s Skype chats featured a consistent pattern: he generally attempted to induce the minor females to engage in sexual chatter and to send sexually explicit videos and/or images of themselves to him. In many cases, Schiller also shared sexually explicit images of himself with the minors to facilitate this online enticement. Schiller offered other inducements, including promise of financial remuneration or alcohol, to some of his targets. Regardless of his success in

² “Cam” is a slang term for “web camera.” Individuals “cam” online when they use a video chat service like Skype to interact over the Internet, rather than typing messages back-and-forth in a text-based chat program. In the context of child exploitation, “cam chat” can also mean engaging in sexually explicit acts such as striptease, masturbation, etc., via web camera.

inducing sexually explicit conduct on the part of the minor, Schiller generally requested that the minor victim provide him with online contact information for other minor females as young as between 10 and 13 years of age.

In addition to Schiller's online solicitation of children, there is also evidence that Schiller used a minor female in his community, Jane Doe #2, to try to meet other children and obtain sexually explicit images. In an interview with SA Lese, Jane Doe #2 reported the when she was a freshman in high school, Schiller asked her for pictures of herself, but denied providing him with any. Jane Doe #2 further stated that when she was in high school, Schiller provided her with a list of girls whom he was "interested in." Most of the girls were under the age of eighteen; Schiller wanted illicit photographs of these girls or wanted to know if they were "easy" and interested in older men. Investigation revealed that Schiller offered Jane Doe #2 alcohol, cigarettes, and other gifts in exchange for her assistance.

Finally, investigation revealed at that on at least one occasion, Schiller has actually engaged in sexual intercourse with a child. Prior to his deployment, while living in Minnesota, Schiller (then 24 years old) met and had sex with a 15-year-old minor female. Charges were eventually dropped based on the fact that Schiller (despite the fact that he admitted to knowing the victim for approximately one year) claimed that he thought the victim was 18 years old, and the victim later corroborated that claim.

The Charged Conduct: Production of Child Pornography

Forensic evidence and follow-on investigation revealed that Jane Doe #1, a Minnesota resident born in 1999, engaged in sexually-oriented online communications with Schiller, including exchanging multiple images at Schiller's request, at least one of which depicted

Jane Doe #1's genitalia. An FBI Child/Adolescent Forensic Interviewer interviewed Jane Doe #1 in February of 2015. During this interview, Jane Doe #1 stated that she met Schiller on MyLOL when she was approximately thirteen years old. Schiller initially told her that he was fifteen years old. However, when they began chatting on Skype, Jane Doe #1 observed that Schiller's Skype profile said he was 26. Schiller then confirmed that he was actually 26 years old. Forensic evidence confirms that Schiller and Jane Doe #1 chatted on Skype between September 23, 2013, and January 12, 2014, during which time Jane Doe #1 was fourteen years old. Schiller previously admitted, during his March, 2014, interview, to engaging in mutual masturbation with Jane Doe #1 in December 2013 via Skype video chat.

Jane Doe #1 described her chats with Schiller as "friendly" at first. However, Schiller directed the conversations towards sexual topics over time. Schiller began addressing Jane Doe #1 with endearing terms such as "baby" and "hon". When they chatted via Skype, Schiller would stand up and not have any pants on. Schiller told Jane Doe #1 that he was horny and wanted her help in fixing that. Schiller told her that she could help by talking in a sexual manner to him, and sending him provocative pictures. Jane Doe #1 eventually acceded to these requests, because she was afraid Schiller would not like her anymore if she refused. Specifically, per Schiller's multiple requests, Jane Doe #1 took naked photographs of herself and sent them electronically to Schiller. Some of the photos focused on her genital area. Schiller sent a video to Jane Doe #1 in which he was masturbating. Schiller asked Jane Doe #1 to masturbate on Skype. Schiller requested to see her "boobs" and "pussy" as well. Schiller told Jane Doe #1 that he "jacked off" to the pictures she sent him.

The forensic interviewer provided Jane Doe #1 with a few photographs that were recovered from a Skype download folder on Schiller's laptop computer (which had earlier been seized by Army CID). One of the photos depicts a female lying on a bed with her breasts exposed. Jane Doe #1 verified that the picture was a picture she had taken of herself, and that she sent the picture to Schiller through Skype chat. The interviewer attempted to show Jane Doe #1 the image charged in the Indictment (file name AB4503D1-F4C9-49CA-B2AE-E33145E29211.jpg), which was also located in Schiller's Skype download folder, and which forensic evidence indicates was sent via Skype to Schiller in October of 2013. This picture depicted the naked torso of a teen-aged girl with the focus on the girl's genital area. Jane Doe #1 began to cry upon seeing the reverse side of the paper, and stated that she did not want to view the picture because she already knew what it depicted. Jane Doe #1 explained that she could see the picture as the interviewer began to hold it up. Jane Doe #1 identified the picture as being one that she took of herself with her iPod, and that she then sent the picture to Schiller through Skype chat. SA Lese later reviewed Jane Doe #1's iPod, and located photos identical to some of the photos recovered from Schiller's computer that was seized in Afghanistan.

In March 2015, defendant was indicted in the United States District Court for the District of Minnesota on one count of production of child pornography. A detention hearing is scheduled for March 25, 2015. At the hearing, the United States intends to call Special Agent Maureen Lese as a witness.

LEGAL FRAMEWORK

Title 18, United States Code, Section 3142(f)(1-2), identifies when the Court must hold a detention hearing, which includes and is not limited to cases involving crimes of violence and/or any felony offense (that is not otherwise a crime of violence) with a minor victim. See 18 U.S.C. §§ 3142(f)(1)(A)&(E). In such cases, and others so enumerated, there are rebuttable presumptions applicable to the detention determination. See 18 U.S.C. §§ 3142(f)(2-3). In other words, there are cases where it is presumed that no conditions of release will assure a defendant's appearance, the safety of the community, or both.

In defendant's case, Section 3142(e)(3)(E) establishes a rebuttable presumption that no condition or combination of conditions will reasonably assure his appearance as required and the safety of other people and the community, in that there is probable cause (in the form of a grand jury indictment) to believe that defendant committed an enumerated offense involving a minor victim, namely, production of child pornography in violation of 18 U.S.C. § 2251(a).

In a presumption case, "a defendant bears a limited burden of production – not a burden of persuasion – to rebut that presumption by coming forward with evidence he does not pose a danger to the community or a risk of flight." United States v. Abad, 350 F.3d 793, 797 (8th Cir. 2003) (citing United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001)). In situations where a defendant actually meets his burden of production as to these two factors, "the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court." Id.

Even assuming that a defendant rebuts the presumption, the United States Code specifies four additional factors for the court to consider in its analysis of whether any condition or combination of conditions would assure a defendant's appearance before the Court and the safety of the community. Section 3142(g) provides that the Court "shall ... take into account the available information" regarding:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
- (2) the weight of the evidence against the [defendant];
- (3) the history and characteristics of the [defendant], including—
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g) (emphasis added).

Pretrial detention may be ordered either upon (1) a clear and convincing showing that release will result in a danger to the community or (2) a showing by a preponderance of the evidence that release will result in a serious risk of flight. See United States v. Abad, 350 F.3d 793, 797 (8th Cir. 2003); United States v. Sazenski, 806 F.2d 846, 848 (8th Cir. 1986).

ARGUMENT

I. Detention is Appropriate Given the Nature and Circumstances Of The Instant Offense, Including Whether The Offense Involves A Minor Victim (Detention Factor 1) And The Weight Of The Evidence Against The Defendant (Detention Factor 2) – 18 U.S.C. § 3142(g)(1)&(2)

The defendant is charged with producing child pornography. His victim was 14 at the time of the offense, a clear indication that the defendant is a danger to the most vulnerable people in our society.

As an initial matter, and as previously indicated, it is important to understand that United States Probation and Pretrial Services (USPPS) does not focus on a defendant's offense or the weight of the evidence against a defendant in deciding whether to recommend release or detention. In other words, two of the four sets of factors the Court is required to consider in determining detention or release – both of which are specified at 18 U.S.C. 3142(g)(1-2) – are not discussed in detail in USPPS reports. Rather, it is the role of prosecution to present evidence and testimony to provide the court a full picture of the statutory factors.

The nature and circumstances of the instant offense (detention factor 1) and the weight of the evidence (detention factor 2) strongly support detention. The defendant represents a particular danger because of his relentless online solicitation of minors, repeatedly convincing minors to engage in conversations of an extreme sexual nature, and in some cases soliciting them to produce child pornography for his sexual pleasure. This type of offense can be committed in any location, so long as defendant has access to a mobile phone, a computer, a tablet or any other Internet-capable device. Indeed, Schiller has

managed to commit these crimes while deployed to a war zone with extremely limited Internet service. If the hardships of a deployment to Afghanistan will not deter him from seeking child pornography, a court order is unlikely to do so.

Defendant was not satisfied with one, or five, or even fifty victims – rather, he has demonstrated an insatiable appetite for communicating online with minor females. Inducing just one minor to produce and share child pornography is an extremely serious offense, as evidenced by the fifteen-year mandatory-minimum penalty Congress imposed for that offense. But Schiller spent many hours a day enticing as many minors as he could locate online to engage in illicit sexual conduct via the Internet, and he has engaged, or attempt to engage, in inappropriate online communications with hundreds of minor females.

Moreover, the strength of the government's case is unassailable: Schiller's admissions, the victim's statement, and corroborating forensic evidence recovered both from defendant's computer and from the victim's iPod all are highly probative of his guilt.

II. Defendant Poses a Danger To Others and The Community (Detention Factor 4) – 18 U.S.C. § 3142(g)(4)

As to the nature and seriousness of the danger to any person or the community, under Section 3142(g)(4), the defendant induced a minor female to produce child pornography for him, and send him that child pornography via the Internet – just one of many similar offenses the defendant completed, or attempted to complete. Production of child pornography is one of the most serious offenses against children in the federal code. But Schiller's dangerousness goes well beyond his online activities. As described above, he solicited a girl

in his community for sexually explicit pictures of herself and her friends, and actually met and had sex with another child.

It goes without saying that absent detention, it would be impossible to monitor the defendant 24/7 to ensure he doesn't commit another sexual offense. As someone who had produced child pornography and also directly engaged in sexual relations with a minor the defendant has self-selected into the category of sex offenders most likely to reoffend.³

III. The History And Characteristics Of The Defendant – 18 U.S.C. § 3142(3) (Detention Factor 3)

The defendant is in the midst of separation from the National Guard. When defendant was employed as a National Guardsman, he spent much of his time during his National Guard duty engaged in the sexual solicitation of minors. Moreover, he employed his military status to facilitate his crimes by focusing his attention on victims who lived near military bases, and also used his enlisted status to illicit sympathy and interest from victims.

Defendant has not limited his criminal sexual contact with minors to the online arena. As noted above, prior to his deployment, Schiller engaged in sexual intercourse with a 15-year-old minor female. In light of the subsequently-discovered evidence that Schiller repeatedly and pointedly targeted minor females under the age of 17 for his sexual advances,

³ Several studies have indicated that in male child pornographers, recidivism rates are high. See M.C. Seto, J. Cantor & R. Blanchard, Child Pornography Offenses Are a Valid Diagnostic Indicator of Pedophilia, 115.3 J. ABNORMAL PSYCHOLOGY 610-15 (2006) (child pornography offenders are three times more likely to be identified as a pedophile phallometrically in comparison to those who are prosecuted solely for hands-on offenses against children); see also M.C. Seto & A.W. Eke, The Criminal History and Later Offending of Child Pornography Offenders, 17.2 SEXUAL ABUSE 201-10 (2005) (sample size of 201 male child-pornography offenders; the most likely to offend again, either generally or sexually, were child pornography offenders who had committed a prior or concurrent contact sexual offense).

Schiller's contemporaneous claim that he was unaware of the true age of that victim is no longer credible. Moreover, in many of his online chats with minor females, he discussed the possibility of meeting in person at a future date. Notably, in those chats Schiller regularly targeted minors living in Minnesota or in the vicinity of military bases, indicating that he focused his online attention on victims he could later meet in person.

CONCLUSION

The government respectfully requests that the Court detain the defendant because no conditions will reasonably assure the safety of the community and the defendant's appearance before the Court, as established by clear and convincing evidence that the defendant is a danger to the community.

Dated: March 23, 2015

Respectfully Submitted,

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